
“University Law Clinics and their value in undertaking client-centred law reform to provide a voice for clients’ experiences”

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Introduction

This article examines how a clinical program can enlarge on the benefits of case work experience of enabling students by adding a course component which engages the students in identifying systemic issues in their case work which can be used to inform work on law reform issues as part of assessment in the clinical programs. The clinical program discussed in this article, demonstrates that assessment can be broadened to enable students to critique the contexts within which client issues emerge. The added component to student case work requires students to develop and use further skills in research, analysis and the evaluation of issues emerging from case work and suggest considered solutions to improve the operation of the legal system. My experience of such an approach is that it deepens students understanding not just of the law and how it is applied to their case work but also the mechanics of the law, how laws are made and how they are influenced. Student lawyers also see the important role of lawyers as members of a profession in ensuring the legal system retains public confidence. A side effect of this extension of the clinical work beyond only client work, is that students become motivated and are more employable (as they leave the course not only with skills in interviewing, communicating, letter writing, applying the law and preparing court cases) with skills in policy development and submission writing.

One approach to ameliorating risks created by using client experience in the law reform process is

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to train clinical students in a 'client-centred' approach. This article explains how the clinical program I supervise in West Heidelberg operates uses a 'client centred approach' to enable client respect and control over their own case but also how such an approach can also inform students about the role and operation of the legal system in their clients' lives. Not only can the clinic play the important role in assisting clients on an individual level with their personal problems but it can also provide a fertile ground for students to undertake assessable work flowing from this case work by facilitating their examination, critique and suggestions of improvements to the legal system. The article then examines a case study of law reform work undertaken by law students and examines the impact and advantages of case-work informed law reform in generating change. The article explores the risks and obstacles in such work and how careful course design and careful supervisor facilitation can obviate these risks with increased space for structured feedback and seminar debriefs. The article then highlights some of the many benefits to the education of students and the benefits to society more broadly of such an approach and explores the role of universities in such work.

There are very few academic articles in the Australian context analysing and critiquing the general role or impact of law reform work undertaken by community legal centres², the private profession, legal aid commissions or other legal services in Australia, let alone by students in a clinical legal education context.³ There is significant material on specific topics where law reform submissions, changes or examinations are being undertaken, and there is some writing on institutional law reform of statutory bodies⁴ but not on the phenomenon of law reform itself nor the law reform undertaken by non- government agencies.

The law reform aspect of the students' clinical placement at the clinical program of La Trobe University based at West Heidelberg is very much a work in progress. At the clinic students undertake 'real client' casework both in criminal and civil law. The law reform work complements the client casework that the students undertake and like the placement is assessable. The clinical program and how it works will be discussed in more detail later in this article. One reason for undertaking the projects initially was an expression by the students themselves that in cases where they saw an injustice been done they felt powerless to do something about it. These comments coincided with the lament of the Committee of Management of the legal service about the need for more law reform activity in view of the pressing and often repetitive nature of the problems that clients were encountering.⁵ This article examines the client-centred approach taken to law reform that has developed. A client-centred approach to lawyering acknowledges that the client

2 J Giddings, 'Casework, Bloody Casework', (1992) Volume 17 No. 6 *Alternative Law Journal*, 261-265 and L Curran *Making the Legal System More Responsive to Community: A report on the impact of Victorian community legal centre law reform initiatives*, West Heidelberg Community Legal Centre and La Trobe University(2007).

3 L Curran, 'Responsive Law Reform Initiatives by Students on Clinical Placement at La Trobe Law' (2004) Volume 7 Issue 2 *The Flinders Journal of Law Reform*, 287; L Curran, 'Innovations in an Australian Clinical Legal Education Program: Students Making a Difference in Generating Positive Change', (December 2004) *International Journal of Clinical Legal Education*, 162; L Curran, J

Dickson and M Noone, 'Pushing the Boundaries or Preserving the Status Quo? Designing Clinical Programs to Teach Law Students a Deep Understanding of Ethical Practice', (December 2005) *International Journal of Clinical Legal Education*.

4 M Neave, 'Institutional Law Reform in Australia: The Past and Future', (2005) Volume 23 *Windsor Year Book, Access to Justice*, 343.

5 L Curran, 'Innovations in an Australian Clinical Legal Education Program: Students Making a Difference in Generating Positive Change', (December 2004) *International Journal of Clinical Legal Education*, 162.

owns the problem and its solution. In it the client and lawyer need to develop a case theory jointly and ensure the client is the primary decision-maker in their case.⁶ This article explores and forewarns other clinical programs of some of the pitfalls, experiences and significant benefits that have flowed from having a student clinical program which seeks to connect client experience to law reform activity as well as seeing students develop lawyering skills in an ethical and legally professional manner.⁷

At the IJCLE conference in 2003, where I originally spoke about some of these activities, one of the conference participants challenged me by arguing that my proposal created too much extra work. As I stated at the time, it all depends on your teaching philosophy. By teaching philosophy I mean whether, as a teacher, you see education as merely teaching a set of skills or as extending students' experience of lawyering by deepening their understanding of the legal system's operation in practice, with the acquisition of skills being a part of that process.

In an article examining the link between strategic planning and quality assessment in clinical law offices that are community based, O'Leary argues that:

In a law clinic, (in addition to providing legal services often to the poor or access to justice for a general or a specific population within a geographic region)⁸ there is an added agenda of determining how best to teach students skills they will need as lawyers. The clinical community has engaged energetically on the question of skills development. While there is some critical discussion about the types of work we choose in clinics, there is a paucity of dialogue about evaluating the types of work we choose or the quality of legal work performed in law clinics.⁹

O'Leary notes that the question of whether a law clinic should engage in significant service to the community as an explicit goal is not answered the same way by all clinical law programs. Some argue that service would be a minor concern, and that the teaching is of more value – neutral skills is a preferred model.¹⁰ However, many clinics developed historically as part of an explicit social justice agenda and the student practice rules generally reflected a prevailing model for students to represent poor clients in clinics that have an explicit social justice agenda (such as ours in West Heidelberg),¹¹

My experience is that the interaction between the students' casework and their law reform involvement 'lifts the students' game' and improves the general performance with the client narrative and engages the student directly in the operations of the legal system and their role as a professional in working for the public good. Students become more interested in their student

6 D F Haynes, 'Client-centred Human Rights Advocacy' (2006) Volume 13 *Clinical Law Review*, 379.

7 L Curran, J Dickson and M Noone, 'Pushing the Boundaries or Preserving the Status Quo? Designing Clinical Programs to Teach Law Students a Deep Understanding of Ethical Practice', (December 2005) *International Journal of Clinical Legal Education*.

8 O'Leary outlines this earlier in her article on page 336. K O'Leary, *Clinical Law Offices and Local Social Justice Strategies: Case Selection and Quality*

Assessment as an Integral Part of the Social Justice Agenda of Clinics, (2005) Volume 11 No.2 *Clinical Law Review*, 335

9 K O'Leary, *Clinical Law Offices and Local Social Justice Strategies: Case Selection and Quality Assessment as an Integral Part of the Social Justice Agenda of Clinics*, (2005) Volume 11 No.2 *Clinical Law Review*, 335, 337.

10 P T Hoffman, *Clinical Scholarship and Skills Training*, (1994) 1 *Clinical Law Review*.

11 Back inserted by the author of this article.

projects not just because they are assessable but because they can see that their work may have a positive impact in generating change. The reason for this is because if the students work when assessed is of a high enough standard, that is at an 'A' Grade level, then it will be sent to key decision-makers identified by the student. This will be discussed in more detail later in this article. Having identified a problem, investigated whether it is widespread, undertaken research, analysed the information and evaluated this material, the students see that they can link what happens in the case work to their capacity as professionals to make changes by using that experience and their skills to improve the legal system. This may involve extra work for a clinical supervisor but the enthusiasm and inspiration that the students gain from the model rubs off not only on the clinical supervisor but also on the other workers on the site of the clinical placement. The work of the students has received recognition, not only by decision-makers but also within the university itself. The university now undertakes to publish the students work in a booklet of papers and distributes these widely. This reflects the recognition by the university itself of the role of clinical legal education in underlining the university's role in community engagement. Furthermore, the feedback and encouragement that the students and myself receive from my academic colleagues who are not involved in clinical legal education has been immense.

A. HOW THE CLINIC WORKS

a. Background to the Clinic: its location and operation

This section will explain the approach taken in my clinic to client interviewing and advice and how the 'client-centred' approach adopted in the clinic informs the law reform projects. It will outline how the La Trobe Law clinic at the West Heidelberg Community Legal Centre (WHCLS) operates and the approach taken. This approach is integral to ensuring that our law reform activities are 'client centred'. If, as I will argue, the students select topics law reform topics based on the casework, it is my view that an approach that is taken to client interviewing should be 'client centred'. By this I mean that it fosters within the students a deep sense of the importance of listening to and hearing the client, of ethical responsibility, and often a strong sense of conviction about assisting the client in navigating the often complex, convoluted, difficult and costly processes that the justice system entails. It is easy to cut across the clients' narrative with the narrow technical legal approach which distils the client's story into legal pigeonholes prematurely and does not acknowledge the context within which the legal issues of the client sits. If students take a client-centred approach to clients not only is there an atmosphere which is non-hierarchical and respectful but also it means that when students report on the problem or issues in their law reform project they are more likely to contain an authentic response to client situations. Sensitivity to the balance between student and the client needs must be considered at every decision-making juncture in this process of delivering legal services and undertaking law reform based on client experiences.

The clinical legal education program at the WHCLS enlists students in their final years of law. It is what has been described as a 'live client clinic', i.e. the students work on 'real client cases' under the supervision of a lecturer who is a qualified solicitor. The clients of the legal service are not seen in the context of a person with a technical legal problem that needs a legal solution but rather as a

person with a range of issues some of which may need a legal response and other which may need a non legal solution or a referral to another professional from another discipline.¹²

In terms of the academic context, the clinic operates as an optional subject that is worth double the credit points of a non-compulsory subject. This is because of the time and work commitments expected from the students. Since 1977, La Trobe University in Australia has run the clinic in partnership with the West Heidelberg Community Legal Service which is co-located with the Banyule Community Health Service.¹³ This relationship between the three partners enables, what I would best describe as, a holistic approach to the delivery of legal services as the clients can be referred from and to the health service which houses doctors, psychologists, occupational therapists, drug and alcohol counsellors, financial counsellors, social workers and other allied health and social welfare services. In addition, the health service can refer clients to the legal service who they identify as having legal problems.¹⁴ The legal service operates as an entity in its own right but within this, houses the student law clinic. The legal service employs a Principal Solicitor, a Secretary and a Coordinator. It is funded by the State and Federal government. West Heidelberg is one of the most disadvantaged postcodes in Victoria Australia. In recent research into social disadvantage in Australia conducted in 2006, West Heidelberg was included as the highest 40 ranking postcodes (out of a total of 726) of disadvantage. It ranked number twentieth in this list. This research looked at 24 indicators. The major ones included low income families, post school qualifications, disability/sickness support, early school leavers, low work skills, care and protection concerns involving children, dependency ratios and criminal convictions.¹⁵ The location and clientele of the clinic gives rise to many opportunities for students to observe how theory of the law and its operation and the practice of law intersect. It gives rise to fertile ground for students to select law reform topics as students directly witness the realities for clients of a legal system struggling to cope with disadvantage, cultural diversity and the impecunious.

For the first two weeks of the clinical program, the students undergo an intensive training day and in later weeks class seminars cover an interview and communication skills program which is orientated towards the students conducting client interviews. In later weeks the course component covers issues for vulnerable and marginalized clients and human rights. As semester progresses the focus moves from skills acquisition and client contexts to a consideration of their client work in the broader contexts of how theory and practice interact. This discussion and analysis is facilitated because the clinical placement students have a two hour class seminar at the university. Later in the semester, the focus of class and seminars each day at the site of the clinical placement is much broader. At this point the course is designed not only to enable students to discuss case matters but also to actively encourage students, by focussed supervisor questioning, to reflect on ethical issues emerging from case work and to consider what their clients' legal problems signify in terms of the policy implications and the operation of the legal system. Time and space are structured into each day to allow for a seminar/debrief. In the morning students have a 'crash course' in an area of law, see clients and then in the afternoon they do follow-up work on their files. At the end

12 L Curran 'Making Connections: the Benefits of Working Holistically to Resolve People's Legal Problems' (2005) 12 *E Law – Murdoch University Journal of Law* 1&2

13 J Dickson '25 Years of Clinical Legal Education at La Trobe University'(2004) Volume 29 Issue 1,

Alternative Law Journal 4.

14 L Curran 'Making Connections: the Benefits of Working Holistically to Resolve People's Legal Problems' (2005) 12 *E Law – Murdoch University Journal of Law* 1&2

of each day there is a one hour seminar in which client cases and strategies are discussed. In addition, the clinical supervisor structures questions for students around ethical issues and the implications of their case work for the broader society. This informs both the identification of their law reform topics and enables students to discuss ideas. These sessions also allow time for students to clarify issues in their law reform projects discussing obstacles and how to overcome them and reinforcing and refining research techniques covered in earlier courses in their law degree. In addition, classes at university later in the year examine the role of law reform, law reform bodies and explores issues around presenting convincing arguments and submission writing.

b. Client interviewing and case-work approach as central to finding the client narrative in law reform projects.

The student engagement with law reform activities is different from many clinical programs. Historically, the approach arose from student feedback, imperatives of the legal service and comments from the private profession.¹⁶ Because of this students have a role in identifying systemic issues emerging in their case work and areas that may be in need of law reform. This enables students to develop skills in delivering legal services to clients and to learn how to develop policy responses and construct law reform submission or write reports.

For the first two weeks of the placement, the students observe client interviews conducted by the clinical supervisor. The clinic uses a non-hierarchical approach in interviewing its clients. The interview commences with a free narrative from the client, triggered by the questions such as “so how can we help you today?” The free narrative will often go for up to five minutes. The rationale behind giving so long to the free narrative [which has proved to be successful over many years] is to make the client feel comfortable, to let them get their story off their chest, to give them a very real sense that they are being listened to and on a more pragmatic level, to ensure that matters are revealed which may not emerge in a more structured interview process which limits the discussion too quickly to the technical legal issues which are revealed.¹⁷ It is our experience that often it is the free narrative opportunity which can give the student lawyer and a clinical supervisor a sense of the client, how the client is feeling, and other matters that may be relevant in defending the case or seeking a remedy. It also enables clients to communicate their experiences and interaction with the legal system. The interview then follows the format of closed and open questioning, establishment

15 T Vinson, ‘Dropping of the Edge: The Distribution of Disadvantage in Australia’, (2007) *Jesuit Social Services* 60–70.

16 L Curran (2003) ‘Innovations in an Australian Clinical Legal Education Program: Students Making a Difference in Generating Positive Change’ (December 2004) *International Journal of Clinical Legal Education*, 162.

17 For a discussion of the value of narrative and client centred representation in the context of representation of clients in court cases see J Mitchell, ‘Narrative and Client-centred Representation: what is a true believer to do when his two favorite theories collide’ (1999) Volume 6

No. 1 *Clinical Law Review*, 85. Mitchell outlines the value of storytelling as a basic form of communication and warns against client voices being muted by the narratives that lawyers tell on their behalf. In the article Mitchell stresses the importance of the lawyers Chile hearing the client’s story and making a range of strategic decisions by the client with a lawyer and the student lawyers as far as possible. Mitchell underlines the importance of respecting the client and providing them with voice. He notes that the lawyer’s role is to provide as much as possible this voice as authentically as it has been given and through a process of filtering through the interpretive biases of a lawyer, 102.

of facts and issues, concept checking [that is checking understandings are correct] and seeking clarification around what it is that the client wants.¹⁸

For the first two weeks of clinic the students are mere observers of the lawyering styles of the clinical supervisor and other lawyers at the placement site. This means that they observe the clinical supervisor going through the stages of the interview outlined above but also explaining in non-technical legal language the range of options available to the client by way of legal advice and the legal processes that might be involved in their case. The clinical supervisor will clarify what the client's expectations might be, explain what will happen next, and what the lawyer will do by way of the follow-up work. The client is then asked if they have any questions.¹⁹

In the model of student lawyering adopted at La Trobe University, when it comes time for the student to conduct the client interview on their own, the student will meet the client at reception, take them to the interview room using some icebreaking questions and conversation to build rapport. Once in the interview room the student lawyer will then take the free narrative, clarify the story with questions, seek understandings, concept check and clarify the key issues with the client thus adopting a client-centred approach to lawyering. The student leaves the room briefly and takes a seat in the clinical supervisor's office. The door is shut and the student lawyer quietly explains the facts, the issues and the client's concerns to the clinical supervisor. The clinical supervisor will then ask for any clarification. This may mean the student has to go in and check these answers with the client before legal advice is given.

The clinical supervisor and the student will then explore the legal and non legal options available to the client. This will include an exploration as to whether or not the client may be able to access support in relation to their non legal issues from the health service where the legal service is co-located or whether there are any other supports that can be offered to the client by way of educational opportunities, work and training. The legal options are detailed by the student in their notes. The supervisor watches very closely as she explains the legal advice in consultation with the student to ensure that what is written down accords with the legal advice to be given. Experience has taught the author that, it is critically important to ensure that the student understands the legal advice and that they record what is needed to be conveyed to the client in a step-by-step format. In the State of Victoria, it is an offence under the *Legal Profession Act 2005* for a person who does not hold a solicitor's practicing certificate to give legal advice. It is therefore critical to ensure that any legal advice given to the client is accurate. It is stressed to the students that the client will be taking action and making decisions on the basis of this advice. When the student returns, on their own, to provide legal advice to the client they are required to give the client opportunities to respond to the advice and note any concerns or preferred options.

Leaving it to the student to deliver the legal advice to the client unaccompanied by the clinical supervisor is a risk that needs to be carefully managed. This is achieved by students writing down the legal options and advice given by the supervising solicitor, the students' repeating the advice in their own words to concept check that they understand the advice. At La Trobe University, we are firmly of the view, that if the clinical supervisor were to give the legal advice directly to the client

18 A Chay and J Smith, 'Approaching Legal Interviewing', *Legal Interviewing in Practice*, Law Book Company, 1996, Ch, 1, 13–21.

19 B Wolski, 'Client Interviewing', *Legal Skills: A Practical Guide for Students*, Thompson, 2006, Ch 2, 59–124.

after the student has done the initial interview, this removes confidence of the client in the student and undermines the students' capacity to take responsibility for the advice that they give. It is my experience, that this approach reassures the client that the student has matters under control, progresses their relationship and places high expectations on the student about the importance of giving the right legal advice. This means the students develop a strong sense of commitment and conviction as well as assuming professional responsibility for the file. In the context of their selection of a law reform project it means that students have a deeper understanding of client contexts, and their responsibilities in accurately identifying and selecting issues they will draw on for their law reform project.

Regular client feedback that is given to the legal service is that clients have confidence in the students, that the students are often the first person who was listened to the client, who may have previously been silenced or turned away. What the students lack in experience, they make up for in their preparedness to work hard for the client, driven by their enthusiasm for the client's case.

However, the student lawyers also have the opportunity of seeing a different lawyering style. As part of the observation process they will see the Principal Solicitor of the Legal Service as well. The Principal Solicitor has a more hierarchical approach to lawyering than the clinical supervisor. It is our view that this is invaluable as it exposes students to more than one approach. Ultimately, although the non-hierarchical approach is preferred as a model for client interviewing, the students can make up their own minds as to the model they prefer when they enter practice.

There is always a need for flexibility in the lawyering approach given the variety of clients that students may need to deal with. For instance, students encounter clients who may be both aggressive and rambling, and would not allow them an opportunity to get the key facts or to give the advice that the client is seeking. In one example this occurred where the client was in fact in the midst of a psychotic episode. Clearly, in such a situation the student lawyer needs to be able to adapt their lawyering approach to fit with the client and their circumstances. In that situation the student also had to be in a position to recognise that instructions should only be given when the client fully understood the actual instructions they were giving and when they were able to make a decision that was informed. A state of psychosis or a drug induced state are clearly not indicators of this.

Issues around capacity to give instructions, where a client is clearly having difficulty, are a good example of the reasons why there is a need for insight, for non-judgmental approaches and for clarity about what is actually taking place in the interview room.²⁰

Duncan has noted, profound opportunities to recognize the impact of ethical dilemmas arise in real client clinical situations. He notes that clinic can provide the most powerful experience of the real context within which the law operates.²¹ The latter also provides a sound reason as to why the student observations about how the law impacts upon their clients might be extended to a law reform context.

20 As a result of this particular experience one past student wrote her law reform assignment issues of capacity and training for lawyers dealing with clients with an intellectual disability. This was published and has been used by law associations.

21 N Duncan, 'Ethical Practice and Clinical Legal Education, (August 2005) *International Journal of Clinical Legal Education*, 7, 13 and 19.

c. Why Client Interviewing and Law Reform Activities should Interact

Shah has highlighted the problems where community development approaches are taken to address structural issues when they are removed from the experiences of the people on the ground.²² Shah's article, although it promotes greater involvement by lawyers with community based organisations to promote social change, does also convey some of its limits. Shah highlights the danger when governments and industry can increasingly hold disadvantaged groups or victims as to blame for their own situation.

However, often the lack of effective involvement, integration and empowerment of the core community in the measures designed to improve their conditions is problematic. For this reason it is important that, in addition to Shah's encouragement of lawyers to engage more constructively and collaboratively with community organisations, this should never displace the client experience and client narratives should form part of the law reform work undertaken. If clients are not permitted within a lawyer-client relationship to provide the context of their situation, then this failure creates a disconnect. Too often by removing themselves from grassroots experience and trying to advocate for people, well meaning people can impose their own impressions and views on what is occurring on the ground. This can make it easy for policymakers to ignore the clients' experience and the impact of the law upon them.²³ Often what has resonance in many debates, is the telling of the clients' stories.²⁴ This can often make it more difficult for decision-makers to dismiss the advocates as being ill informed or 'party politically motivated'.²⁵

In the context of the representation of clients in court, Mitchell notes that allowing the client to tell a story and actually hearing it is a concept that is quite nuanced:

It incorporates a constellation of ideas. Listen to the client's story. Hear what they want. Try to be creative about ways to tell the story. Look for opportunities to bring their story into the legal process. At the same time, join together to discuss any risks and problems which may result from various strategic choices including the risks in even telling the story and whether those risks are worth it to the client.

This is a balance which students at the clinical placement in my program try to achieve.²⁶

22 D Shah, 'Lawyering for Empowerment: Community Development and Social Change', (1999) Volume 6 No.1, *Clinical Law Review* 217-257.

23 D F Haynes, 'Client-centred Human Rights Advocacy' (2006) Volume 13 *Clinical Law Review*, 379.

24 P Lynch, 'Human Rights Lawyering for People Experiencing Homelessness' (2004) Volume 10 No. 2 *Australian Journal of Human Rights*, 59 and C Parker, 'The Logic of Professionalism: Stages of Domination in Legal Service Delivery to the Disadvantaged' (1994) Volume 22 No.2,

International Journal of the Sociology of Law, June, 145-167.

25 D F Haynes, 'Client-centred Human Rights Advocacy' (2006) Vol. 13 *Clinical Law Review*, 379 and see comments attributed to the Australian Attorney general Mr Philip Ruddock, *The Australian*, 2 October 2006.

26 J Mitchell, 'Narrative and Client Centred Representation: What is a True Believer to do when his two Favorite Theories Collide', Vol. 6 No. 1 (1999) *Clinical Law Review*, 85, 103.

d. The importance of ensuring ample opportunities for student feedback and reflection in the course design

As has been noted above, in addition to self appraisals between the students and their supervisor and the completion of a journal reflections on student lawyering, the students at the WHCLS clinic have a one hour debrief/seminar at the end of each clinical day. In this seminar students go through the facts, issues and law of their case, brainstorm other options and share insights about the client experience, their role as lawyers and the reality of the operation of the legal system. Some clinical programs in their feedback and reflections focus only on client file work and lawyering, however we believe that our approach to feedback and reflection broadens the students' awareness beyond the exigencies of their day to day practice and enables space for group analysis and evaluation of the variations between practice and theory.

The discussion in the seminar often includes analysis of the issues confronting clients and the realities of the practical operations of the legal system and how it interacts with the community. Back in the seminar at university on the following Monday, the students critique their practical experience of the legal system at clinic, looking at how it relates to the theoretical material that is contained within their readings for university. It is this environment and approach to teaching clinic which inspires the students when it comes to selecting their topics for a law reform project. In addition, time is spent in these discussions underlining the importance of perspective, the importance of credible well researched and articulated positions. These discussions help to ensure that students avoid personal supposition and bias in their law reform assignments since they come to see that if they wish to influence decision-makers then emotive and unsupported assertions will hold little weight. As students consider the need to influence decision-makers as the imperative, their work tends to have a superior quality than work that is purely prepared for a university assessor. This has meant that decision-makers respond favorably to the student work both to encourage students to participate in public life but also because the work is of a high calibre. From the students' perspective, they can use the acknowledgements of their work by decision-makers or media and the experience of submission writing in their resumes as they apply for jobs.

O'Leary has noted the value of opportunities for feedback and reflection:

Moreover, my experiences have led me to conclude that when reflection and feedback become part of the office culture, clinic faculty, staff and students feel more connected to the enterprise of teaching, learning and social justice lawyering, they're more connected to a team, and feel even better about their work.

I would add that such opportunities for feedback and reflection by the students both in their teams on placement and individually with the clinical supervisor add a depth to their analysis and evaluation of any given problem. Such discussion and reflection means the student lawyer can see the problem and the issues from a range of different perspectives. They have to answer queries and questions from team members and the clinical supervisor about their approach to the client. Discussion of the client's problem (with legal professional privilege operating) can also be very challenging to the individual student, as their team can flush out the students own prejudices and any judgmental elements which often sees the students having to justify and reflect on their own biases. The process of feedback and reflection needs to be given additional time but the ability of students to relate the specifics of their case work to the broader societal implications is transformative. Students have to articulate the issues and relevant law and unpack interactions with

the client, contextualise the problems and comment on the client's situation.

e. The law reform project – selection of topics and process

The students identify the law reform project not by some random examination of the Internet for a topic that inspires them or by their lecturer providing them with set essay topics but rather, they select areas of interest that are generally based on their own observations of how the legal system impacts upon the client. In addition, students whilst on clinical placement and while still exploring which topics they will select, will have discussions with professionals at the health and legal service to gain a sense of whether or not the students' client experience is a common one and how widespread it is in the West Heidelberg community and beyond. After this process, a topic is selected in consultation with the lawyers at the legal service.

In the law reform projects clients are anonymised and steps are taken to guard against the risk of any breach of confidentiality. Many client matters are also resolved before the law reform project is completed. Students undertake further research to identify whether client experiences that reflect problematic responses by the legal system are widespread. If their research reveals that it is widespread then students undertake literature reviews, collate similar case histories and identify what needs to occur if the problem is to be rectified. This means that the law reform activity emerges directly from client experiences but confidentiality is preserved. The model of interviewing clients which enables scope for the free narrative and a respectful environment means that there is a capacity for more of the issues to emerge that have impacted upon clients' lives and choices. There is also a capacity to identify trends in case-work and cases where the same problems have re-occurred.

With the University framework for the clinic, the emphasis on legal research also means that there is an expectation that the students will examine relevant literature, reports, research and engage with the other professionals at the site of the clinical placement to learn of the factors which affect any problem and how it might be resolved. The students are required to investigate the problem or issue of law reform that they have selected. Sometimes, it may not involve a change to the law but rather a retention of the law or its refinement. The students also see this as an opportunity to give a 'voice' to their clients. It is very important as a clinical supervisor and law lecturer to guide and explain to students the dangers of stereotyping, pre-judgment and the need to ensure balanced and evidence based critiquing.

Originally, the students undertook their projects in teams. This has changed as it became too unwieldy for the supervisor to manage both in terms of the ethics approval process (discussed later in this article) and some of the student dynamics which occurred. The law reform project is now conducted on an individual rather than team basis. Even so, as the students undertake the clinical placement in teams of four, I find the students help each other out with materials that are relevant to each other's projects. In the new law reform model, students are required to complete a background research paper of 2,500 words on their law reform topic and submit a 500 word letter to a decision-maker summarising the issues. This is submitted and marked in the same way as a normal piece of university against pre-set criteria discussed later in this article. A student who achieves an 'A' grade and whose work is of 'sufficiently high enough standard' will have their background paper and letter sent to decision-makers. Sometimes, to have a significant impact, the students' work may be disseminated more widely. The student is required by e-mail to consent to

any suggested 'tracked changes' inserted by the clinical supervisor and to consent to the publication of their project.

f. The Assessment Process for the Law Reform Projects

In La Trobe University's clinical program at the WHCLS, the students are assessed as follows:

- Placement 45%
- Class Participation 5%
- Class Presentation on Ethics 5%
- Client Report 15%
- Law Reform Project 30%

In many university connected clinics the student has to submit an assignment for the assessment, in addition to receiving a grading for their actual performance on placement. Often students on reaching the final years of law school are tired and bored with their studies and cannot see the connection between what they do at University in their law school and its relevance to practice. In addition, they often have the experience of submitting assignments which are seen by only one person and are graded without further review. In my experience, by turning the assessment into a project which is assessed as a normal piece of university work but with the possibility that it might (if of sufficient quality) be disseminated to decision-makers, this makes the students ensure that their arguments are coherent and constructive. Realising that they may have the ability to inform or change the laws and policy means the students work to a much higher standard than that which would normally be the case. The students 'lift their game'. By linking their assignment to a real life problem where the student may be able to convey client experience inspires students to perform and what they learn through this process is significant.

Students are given time at clinic to work on their project as well as their client work. Nowadays often publication of the students' individual law reform projects also occurs again in a glossy form of Occasional Papers produced by the University itself. This is sent to a very extensive range of organisations which include the members of Parliament, educational institutions including the Council for Legal Education, the Law Societies around the country, non-government organisations, social welfare and health organisations as may be relevant, media outlets, members of the judiciary and community groups and to the clients who may have requested a copy in the course of the law reform project. This reflects a new recognition by University of the important role of clinical legal education in the context of the broader society and for the University itself.

B. THE VALUE OF THE CLIENT-CENTRED LAW REFORM APPROACH

a. The client-centred approach in conducting the law reform project and how risks can be minimised

A challenge for students is that often they need to regulate the passionate conviction about the client's experience and their own sense of injustice about it. The students' training means they seek to give expression to the client's voice but in a credible way so that decision-makers will not ignore it or dismiss it. This means they have to think through their strategy and how it can meet these two

ends whilst at the same keeping the clients' integrity. This is an important lesson for students as often their rage or zeal could undermine the actual client voice. It is important therefore as the clinical supervisor/lecture to carefully outline the dangers involved in not yet fully thinking through the issue, what they want to say and how to say it. I fully agree with O'Leary's comment that:

It is in the interest of a clinical law office and its students, faculty, staff and clients to regularly and systematically set program goals and then assess whether the goals are achieved as well as whether the goals are right in light of social justice objectives. The needs of both client groups and students will change over time, therefore the goals of the program must change over time.²⁷

Much of the literature around client-centred lawyering highlights the dangers of paternalism, destruction of the voice of the client, and the dangers of imposing a culturally laden middle class spin on a problem which does not do justice to the client or the issue.²⁸

Weng has observed that the human reality is that people react differently to people who may be different from them.²⁹ Weng notes that culturally insensitive and discriminatory responses may be unconscious³⁰ and argues that it is therefore important for a lawyer to receive multi-cultural training raising their awareness as to how their own culture can influence the manner in which they approach clients of a different culture so as to guard against judgmental practice. In the article, Weng states that such self awareness is important in mitigating against inappropriate conclusions by a student lawyer. Weng states that being involved in real life examples of how unconscious categorisation can affect behavior and cultural self awareness can enable more accurate, client-centred lawyering.³¹ Cultural training and self awareness are integrated into the teaching program of the clinic at WHCLS. Often students on clinical placement at West Heidelberg have to deal first hand with police, housing workers and social workers who proclaim that the reason for our clients' dilemma is because of the cultural grouping they belong to and their different ways. When these are used as justifications for different treatment, our student lawyers very quickly become aware of the dangers of stereotyping.

I do not claim that the student law reform projects are the easy to guide or to supervise. Extensive thought must be given to the design of the clinical teaching program to ensure that where students are representing clients from disadvantaged backgrounds and cultures that are different to their own, there is scope in the course design for students to learn about different cultures and causes of disadvantage and its impacts.

b. Students truly challenged

The reality is that many of our students come from middle class backgrounds and have never been exposed to the issues that confront our clients before. This can be extremely personally challenging

27 K O'Leary, Clinical Law Offices and Local Social Justice Strategies: Case Selection and Quality Assessment as an Integral Part of the Social Justice Agenda of Clinics, (2005) Volume 11 No.2 *Clinical Law Review*, 335, 339.

28 L F Smith, 'Why Clinical Programs Should Embrace Civic Engagement, Service Learning and Community Based Research', (2004) Volume 10,

Clinical Law Review, Spring, 723.

29 C Weng, Multi-cultural Lawyering: Teaching Psychology to Develop Cultural Self Awareness, Vol. 11, No.2 (2005) *Clinical Law Review*, 369.

30 C Weng, *Op cit* at 371.

31 C Weng, *Op cit* at 373–376.

for many of the students. Again, the opportunities for daily de-briefs and discussions which are structured into the course's design are important, as well as the availability of counselling for students at the university. These are also elements of student care. Yet, it is the students' exposure to the variations in treatment of the different clients by the legal and social welfare system; the client-centered approach taken to interviewing clients and in the follow-up work on the client's case that enables a transformative process to occur for students. The students become aware of the structural impediments confronting clients in many of the cases. It is important that the students' law reform projects allow space for the freshness of student ideas. These must be refined so that sophisticated suggestions or recommendations ensure that the project will be well received. A combination student freshness and carefully constructed argument can lend the projects a uniqueness that other law reform submissions by other organisations who are more cynical and world weary can lack.

It is this commitment to client and the consequential desire of the student to improve the justice system for future clients that generates in the students the desire to influence decision-makers.. Sometimes, they are so keen and motivated that we need to remind them of their other commitments in their other law subjects. As one student stated:

I had gotten so far in my law degree that I had begun to wonder whether this was all for me and whether I had just wasted my time. I thought that I would be hopeless with clients. The clinic came just at the right time. I now see the relevance of my Degree. I'm not as hopeless with clients as I thought I would be and I also see through the law reform project that with my training and my education, I can have a role in improving the justice system.³²

It is rare in the clinical legal education program at La Trobe University in West Heidelberg that we have to deal with lazy students or students who don't take responsibility for the client work. It is my view, that the reason for this is the combination of the client-centred lawyering approach we adopt in casework and the opportunity that the students are given to make a difference through the law reform projects.

c. Some examples of the impact of law students' law reform work

In terms of the impact of the students' law reform projects in moving the operation of the justice system for clients there is evidence that this has occurred. The students by articulating the problems can explain the experiences of the clients (which would otherwise not have been exposed), examine the issues and arguments on both sides for change and based on this work make suggestions for improvements. Examples of the impact of the students' work include:

1. The decision to locate a new specialist family violence court at the Heidelberg Court following a student report outlining problems for victims of domestic violence based on their experience at the West Heidelberg Community Legal Service. A representative from the Department of Justice's Court Services Division advised that were it not for the timely arrival of the students report the court may have been located elsewhere. In addition, many of the students' recommendations on the need for linked up services to support victims of domestic violence and greater powers for the magistrate in dealing with perpetrators of

32 Clinical Legal Education Student e-mail, 2006.

violence were adopted in new legislation in 2004.

2. A request by the Australian representative body for counsellors to publish the students' guidelines for counsellors in dealing ethically and lawfully with care and protection cases for children. The agency asked if the student could do further paid on the guidelines for counsellors.
3. Considerable media coverage and interest in the issue of mobile phone debt and its impact upon young people. Within 24 hours of the release of the report there were 84 media contacts made and 22 interviews conducted with media outlets. This included coverage on national television and radio current affairs, as well as coverage of the issue on the BBC and in a New Zealand daily newspaper. Although the report is now three years old the last media enquiry in relation to this report was on 28 June 2007.
4. The adoption of some of the students' recommendations on how to assist self-represented litigants in the Magistrate's Court forms part of the Court's Strategic Plan for the next ten years.

d. A Case Study of a Law Reform Project Undertaken by Clinical Students

Case Study: The Somali Project: Crossing the Cultural Divide

i. Client input:

The students had cases involving a number of Somali clients. The clients had come to the legal service to seek help in a range of legal issues. These included the non-payment of parking fines, issues around how they were dealt with by the police in relation to a lack of support in applications for protection from domestic violence, criminal matters, debt matters, financial problems, matters pertaining to immigration status, social security entitlements and matters in which they alleged discrimination in the treatment by government officials. The latter were in the areas of housing and the care and protection of children.

ii. Problem identification:

As stated, opportunities for student reflection and analysis of the days events occur in a number of ways firstly through the student debrief at the end of the day with their teams on placement (of four students), in class on the following Monday as part of the larger group (of twelve students) and more personally in their own reflective journals which they are required to keep for supervisor monitoring of their progress. These discussions enable opportunities for students to share their client experiences and compare any commonalities or trends in what they had observed.

In this case, the students identified that a number of the Somali clients that they had interviewed had very little understanding of the Australian legal system, its laws, procedures and processes and yet these clients were still subject to these laws procedures and processes. One example was a case which involved a Somali client who wanted to challenge a parking fine on the basis that there was a street with a curb and therefore he should be allowed to park there. This client said the parking

fine was unlawful as it was clearly a parking space. He did not understand that signs limiting parking and parking restrictions imposed by the local council gave them the authority to fine someone if these restrictions were ignored. The client insisted on challenging the fine and subsequently lost his case when he asked for it to be referred to open court. The student had tried to explain to the client his legal position but the client could not understand the concept of a council being able to impose fines.

In another case, the student's client had been assaulted at a function in front of other members of the Somali community. The police knew the identity of the man. The client was seeking the legal services assistance with a claim as a victim of crime under state legislation. A precondition for her claim was that the police had to make a report and take a statement. Despite numerous requests to the police by the client and the witnesses, the police had failed take statements or press criminal charges. The student lawyer intervened on the client's behalf to make the police take action. This intervention led to improved responsiveness by the police.

The student also investigated the making of a formal complaint against police on behalf of the client by conducting research into the police complaints mechanisms and the possibility of a complaint through the Equal Opportunity Commission in Victoria. In the end, the client's instructions were not to proceed with any complaint against police about their inaction and some racist comments as any such complaint would be investigated by the police. She indicated that her own experience in Somalia with police had been terrifying and that she would rather forget about it. The client also communicated to the student lawyer how disappointed she was with the legal system as it had failed to protect her. The student heeded the client's instructions.

There were many other instances in the student client casework that gave rise to the concerns about the treatment of Somali people. The students in one placement group on a Wednesday decided that they would talk to other service providers including the Principal Solicitor of the legal service and the health service about their experiences of how Somalian clients were treated. The students decided that there was a definite trend. Issues emerging included a lack of understanding of the systems that operated, expectations of the community placed on them by government agencies; the lack of any understanding by both the Somalian community about these expectations and a lack of awareness by agencies of the background, cultural experiences and struggles of Somali population in West Heidelberg.

iii. Fact finding

The students did some demographic research in relation to the numbers of Somalian people in West Heidelberg and surrounding districts examined why the Somalian people came to the district and the numbers in private and public rental as well as conducting research into the experiences of Somali people as new arrivals. Having gathered this information, the students were keen for the legal service to conduct a community legal education forum with members of the Somali community with a view to explaining their legal rights and responsibilities insofar as the Australian legal system was concerned.

The legal service held this forum. The clinical supervisor asked students to develop a plan as to how the forum would progress and to devise the questions that might be asked. As the students had never conducted a public meeting before this was a real challenge for them. The supervisor had to remind students to provide ample opportunity, in the design of the forum, for the some the

Somali community to explain their experiences (by way of narratives and stories) of the legal system in order to obtain the Somalian perspectives.

I suggested to the students that they might need to prepare some prompts to stimulate discussion and form ideas as to how to earn the trust of the community before we commenced proceeding so at the forum. In my own research into legal services I knew that clients do not necessarily know how to identify what is a legal problem and indicated that this might be issue.³³ Therefore, the students had to make suggestions and devise scenarios and ask the Somali community to respond on the basis of their own experience. These scenarios, I indicated, could be based on the existing experience of the students with the own client base. In organising the public meeting/forum with the Somali community, I suggested that the students liaise closely with the Somali worker at the health service and take guidance from her around the agenda for the meeting as well as how to approach the Somali community. Most of the students in the Wednesday's group had already had contact with the Somali worker through the casework and so had a positive relationship with her. The students took advice from her on how to advertise the meeting and ensure a representative attendance by the Somali community. This involved the Somali worker explaining to various people in her community the purpose of the meeting and its agenda and what it sought to achieve. It was also important to be clear about what the Somali community might get out of the meeting in terms of better understanding the legal system and by blocking out appointments at the legal service if they needed legal advice on individual issues that emerged from the forum.

The forum initially was fairly quiet but as it progressed community members were very vocal about their experiences and understandings of the legal system. The forum revealed a fundamental lack of understanding of how the legal system in Australia operated including the role of police and the State and the independent role of a lawyer. The members of the community knew little about the role of lawyers and expressed unrealistic expectations of a legal representative for example, the role of a lawyer was to 'get them off' at any cost. This explained many of the misunderstandings that has arisen in client casework and was able to inform the legal service about how it could better offer its services to this community. At the forum the role of police, lawyers and the courts had to be clearly outlined as there was significant misunderstanding. For example, notions of legal professional privilege were unfamiliar. Clients revealed a concern about telling their lawyer the truth about their experiences for fear their lawyer would reveal them to police. Clients also revealed a lack of understanding of the importance of the presentation of evidence in court cases and the role of judges as independent assessors of that evidence in making the final decision.

Although the students only observed the meeting and did not actively participate in the meeting (due to the problems with ethics approval mentioned earlier) they did have critical input into the agenda for the meeting and liaising with relevant people as to how to conduct the forum. The meeting was facilitated by the Somali worker, the clinical supervisor of the students/lawyer and the Principal Solicitor of the legal service. What emerged, based on the clients' narratives was a picture of frustration, a lack of understanding both of the Somali community and the legal system, and a range of assumptions about their knowledge of the legal system.

What also emerged were some concerning experiences by the participants in the forum about their treatment by various personnel which they believed was often based on their race. The legal service

33 L Curran & M Noone 'The Challenge of Defining Unmet Legal Need' (2007) Volume 21 *Journal of Law and Social Policy* 63.

staff tried to explain in simple terms the manner in which the legal system operated and the various agencies that worked within it and their role. The participants of the forum asked for a further forum to discuss the issues. This occurred in the following year and follow up on individual cases was facilitated with block legal interviews being made available.

The community members present were aware before attending the forum that the students would be observing and that they were working on a law reform project about the Somali and community and the Australian legal system. They were aware that any material used by the students emerging from the forum would not identify any person at the forum. At the conclusion of the meeting, each participant was again asked if they consented to the students raising in general terms the experience of their community in a report with their confidentiality protected.

The students did considerable research and talked to many service providers before they commenced drafting their law reform project. They also had their own experience with clients and the experiences of the clinical supervisor and the Principal Solicitor to inform them about some of the issues that confront Somali clients. They had also learned a lot about Somalia and the experiences of the Somali community firsthand at the forum. As an elder of the Somali community is also based at the health service they consulted with him a draft of the report. Each chapter was written by an individual student who selected an area that was of interest to them or that had been inspired by their own client experience. The chapters included a chapter on housing, domestic violence and one by way of background about the reasons for Somalians seeking refuge in Australia, on the levels of knowledge of the legal system and the final chapter on the need for improvements in information provided to the Somali community.

The report, which was a team project was researched, written and compiled by the students and submitted as an assignment. The students received an individual grade as they each wrote a separate chapter. It was received by the law school office as a normal piece of student work. It was then graded. Once a decision was made that the report would be published, the draft report was submitted for consideration and final input from members of the Somali community and the Committee of Management of the legal service. In this way, the community's representatives were able to check for any misrepresentations or errors. The clinical supervisor edited the work, compiling it, formatting it and printing it and sending it about according to the mailing list suggested by the students.

iv. How the Somali report was received in the public domain and its impact

The report was extensively covered in local media in Australia. This included the West Heidelberg area, the major metropolitan daily newspaper and also a national newspaper. It was also discussed on community radio. Various government and Parliamentary decision-makers said that they found the report informative and helpful in terms of understanding the obstacles confronting the newly-arrived Australians from the Somalian region.

One important positive outcome from the report was an indication by a senior member of the management of the State Government's Office of Housing in Victoria, that the Minister for Housing of the time, had sent a directive, based on the students report, to the Department to improve the cultural protocols in how the Departmental officials dealt with people from the Somali and community and newly-arrived communities. A detailed letter from the Director of Housing was forwarded to the legal service outlining Office of Housing policy and suggested changes to that policy and thanking students for their contribution to this debate.

One of the unfortunate and unintended outcomes of the report was that certain representations made in the report about the need for an improved knowledge of how the legal system operates through improved community legal education and community development opportunities were manipulated and reinterpreted. The report was used by the Federal government of the time to justify the introduction of a citizenship test. This citizenship test has caused widespread concern in the Australian community particularly in the migrant community. Ironically, many people born and bred in Australia would not themselves be able to answer many of the questions contained in the citizenship test.

Although the students' project was written and published in 2004, the project continues to inform a range of different decision makers. Recently, a Supervising Magistrate at a Magistrates Court requested the number of copies of the report to circulate to her Magistracy so as to improve understandings of cultural contexts when the court was dealing with domestic violence cases.

The report has also prompted the West Heidelberg Community Legal Service, after a discussion with the Somali worker and program manager of the Community Health Service to apply as a client to an organisation called the Public Interest Law Clearinghouse³⁴ on the legal merit of taking an action on behalf of the Somali community in relation to the failure by government to provide affordable accessible and appropriate housing for members of the Somalian community. We will keep the Somalian community informed of any progress and have received a Memorandum of Advice from Queens Counsel. We would not commit to any further course of action without properly consulting the individuals and members of the Somalian community for their instructions. Counsel's Opinion may be useful in applying pressure on a policy-makers into the future. Again, any such action would be done after seeking advice from Somalia community itself. This process emerged wholly because of the law students' identification of the problems with housing in the Somali community.

e. The reasons why clinical programs are ideally placed to add capacity to organisational law reform

In 1992, Giddings described how legal centres use casework to achieve a range of legal and social changes. He stressed that their work in this area is not unconnected to individual cases which inform the processes that lead to the law reform activity.³⁵ He observed that the community legal centre (CLC) work is not very often at superior court level but is more often directed at grass roots cases. Giddings stated that "Casework needs to be viewed as only one mechanism which may assist CLCs in achieving their objectives."³⁶ Giddings reflected that it is the casework of CLCs that is attractive to funders, but argued that casework can be structured in such a way as to "stretch the

34 The Public Interest Law Clearing Centre (PILCH) is a community legal centre which takes applications where a matter is in the public interest, and the matches legal matter with a law firm or a barrister on a pro bono basis. Interestingly, this legal centre runs the Secretariat made up of administrators and solicitors that can either take on case themselves by acting as instructing solicitors or match the case with pro bono lawyers. They also have a membership which involves law firms and barristers paying a membership fee to provide their

services for free to clients in public interest law cases. The list of barristers is now quite extensive. This legal service has grown in size and has conducted significant test cases in the state of Victoria and Australia wide. It now also houses a homelessness law clinic and a human rights law centre.

35 J Giddings, 'Casework, Bloody Case-work' (1992) Volume 17 No. 6 *Alternative Law Journal*, 261–265.

36 *Ibid*, 261.

benefits beyond the individual assisted.”³⁷ Such benefit sharing, he stated, include changing existing interpretations of particular laws, amendments of Statutes, maintaining or increasing the accountability of groups or individuals in positions of power and/or changing the practices adopted by particular industries.

Giddings also examined a series of test cases that CLCs had been involved in: Housing in 1982³⁸, Credit in 1989³⁹, Violence Against Women and Children (VAWC) in 1991⁴⁰, Employment in 1991⁴¹ and Police⁴² in 1989. Giddings stated that often CLCs do the work neglected by the private profession as clients do not have the capacity to pay for a private lawyer. He observed that therefore, CLCs often represent groups in the community who traditionally have little opportunity to exert their legal rights. He argued that change can be bought about not only by challenges in the courts (which is often not a feasible opportunity for impecunious clients or CLCs) but through improving the process to make it more just.⁴³ He noted that collectively legal centres through their casework have been able to identify trends and respond. Similarly, Schetzer also observed that the State has limited capacity to respond to those who are disadvantaged and that community legal centres (and implicitly clinical programs) are well placed to ensure that feedback on policies and how they operate on the ground is provided to governments.⁴⁴

37 *Ibid*, 261.

38 The CLCs in a case secured the release from prison of squatters, See M Noone and others, ‘Bona Vista: A Large Attractive Property’ (1983) Volume 8 No.6, Legal Service Bulletin, 152–157, Ministry of Consumer Affairs, Annual Report, 1991, 43.

39 In 1989, HFC Financial Services was taken to court by CLCs and financial counsellors for failing to comply with certain conditions in their dealings with clients. HFC Financial Services was ordered by the Victoria Court of Appeal to pay over 3 million dollars to a fund to establish the Consumer Law Centre. As a consequence of this case, credit providers licenses would only be provided in future where certain conditions were met that protected consumers. J Giddings, ‘Casework, Bloody Casework’ (1992) Volume 17 No. 6 *Alternative Law Journal*, 261, 262.

40 In 1991 the Women’s Legal Resource Group in Queensland gave support to a woman charged with murder after 22 years of domestic violence against her by her partner. In the Queensland Supreme Court she was found not guilty on the basis of self defence. J Giddings, ‘Casework, Bloody Casework’, Volume 17 No. 6 *Alternative Law Journal*, 26, 262.

41 The Public Interest Advocacy Centre (PIAC) was involved in a High Court Case, *Australian Iron and Steel v Banovic* (1989) EOC 92–271. In this case by a

3-2 majority the High Court upheld the claims of eight women over their retrenchment as it was deemed to be discriminatory. J Giddings, ‘Casework, Bloody Casework’, (1992) Volume 17 No. 6 *Alternative Law Journal*, 261, 262.

42 Giddings notes that CLCs were granted standing to appear in Coronial inquiries into police shootings. This recognised that they had something worthwhile to submit. He also notes that concern about the treatment by police of young people led to the establishment of ‘Alphaline’ by the Fitzroy Legal Service. This was a twenty-four hour telephone advice line for young people facing police questioning which received funding. J Giddings, ‘Casework, Bloody Casework’ (1992) Volume 17 No. 6 *Alternative Law Journal*, 261, 263.

43 J Giddings, ‘Casework, Bloody Casework’ (1992) Volume 17 No. 6 *Alternative Law Journal*, 261 and L Curran, ‘Making the Legal System More Responsive to Community: A Report on the Impact of Victorian Community Legal centre Law Reform Initiatives’, West Heidelberg Community Legal Service, June 2007.

44 L Schetzer, ‘Community Legal Centres: Resilience and Diversity in the Face of a Changing Policy Environment’, (1992) Volume 31 No.3 *Alternative Law Journal* 159.

C. SOME OF THE PITFALLS AND SOLUTIONS

a. Problems with the Ethics Approval Process for students

One of the difficulties encountered in the first four years of the conduct of the law reform project at La Trobe University was the overly bureaucratic ethics approval process at the University that the students were required to undertake. Any research, involving human participants required ethics approval from the university. When we first conducted the projects during 2002–2003, when the students were going to interview an ‘expert in the field’ ethics approval was not required. This meant that students were able to go in the interview people who were psychologists, lawyers, scientists and so on depending on the relevance to the project. This changed in 2003 with students being required to gain ethics approval for any request for interviews or consultations with people. Students can request information that was publicly available but cannot directly interview of the clients or the workers without ethics approval in the conduct of research. This change did not effect students conducting interviews and seeking information as part of the client-casework on placement but related to when students wanted to research by interview the experts relevant to their research for the law reform project. Since this change, there has been an effect, to a certain degree, on the level to which the students’ law reform projects can remain ‘client-centred’.

Whilst fully understanding the importance of appropriate ethics protection for human participants in research, the process was unsuited to the student research in that it was unduly bureaucratic and often not timely. Initially, the ethics approval process required the students to complete a 40 page application form. The forms did not relate to socio- legal research practices but were more akin to a medical science research. For example, questions included the measures that were to be taken if the students were to conduct electro- convulsive shock therapy and the taking of tissue samples. The process would often take a long time to get approval leaving little time for the students to conduct interviews, and write up for the results in time for assessment.

As clinical supervisor and law lecturer, I liaised with the various university personnel and instrumentalities that were in charge of the ethics approval process to try to streamline the ethics approval process so that it was simpler for students but so that it still provided ethical protection for human participants. I have tried to make the ethics approval process more relevant to socio-legal research rather than as it was, based on a medical research and experimentation model. In the end, the energy that this took and the stonewalling by those within the central bureaucracy proved difficult and I decided that these energies would be better placed elsewhere. Even though there were attempts to accommodate the student projects, the process remained cumbersome and placed unrealistic expectations upon the students.

Students still have the option of applying for University ethics approval for their projects, however, they now rarely take this option as it is too work intensive and they may not receive the approval they require in a timely fashion in terms of their due date for their assignment. Instead, the students now use their casework experiences and discussions with personnel at the site of the clinical placement about the broader issues around their projects. They now rely mainly on publicly available information from community organisations and research institutes as they can no longer interview people beyond the clinical placement experience.

The students’ law reform projects no longer benefit from interviews with experts as they once did. This contact with other professionals often had the side benefit of opening up future pathways for

students in employment. It has also clearly cut out the opportunity for the students to conduct further interview research with clients of the legal service beyond their own normal client interviews in relation to the casework. It has not however curtailed the capacity of the students to reflect client experiences as they can still use de-identified case studies based on real clients seen by both the workers at the legal service and in the broader health service as part of their placement experience. Sadly, in manoeuvring the ethical problems this has created a disconnect in terms of the provision of the client voice and client centred law reform. However, students still decide to do a project based on their own experiences with clients or those of other personnel at the legal service, the health service and in this way the client voice can still be heard.

b. The use of 'spin'

As stated earlier the danger which emerged specifically in the case study on the experiences of the Somali community with government manipulating the students' findings highlighted one of the problems encountered in law reform work where well intentioned student input into the public debate is distorted. Nonetheless, the experience made the students aware that they needed to question statements by those in authority and not presume that just because statements are made by government they are correct. This incident was a warning to us all.

c. Disorientation

Another issue is the discomfort both the students and the clinical supervisor can be exposed to as they analyse the layers that can impact on clients from disadvantaged communities. Aiken acknowledges that injustice can be disorienting. She argues that when this disorienting experience occurs we should seize upon it and help the students develop a critical consciousness of the operation of power and privilege both in the situation they are observing and in themselves.⁴⁵ As stated earlier the use of feedback and reflection time built into the course design is a critical component in equipping students to develop a critical consciousness but also in order to ensure that students are given strategies by their lecturer/supervisor to deal with this disorientation. There are also articles that students can read which reveal other experiences of students in clinical programs that convey strategies for dealing with clients and difficult situations.⁴⁶

D THE CRITICAL ROLE FOR UNIVERSITIES IN LAW REFORM ACTIVITIES OF CLINICS

Many international law clinics are based in legal aid services.⁴⁷ This is the case in Australia, Canada, and South Africa, the United States of America and the United Kingdom. The link that such

45 J H Aiken, 'Striving to Teach "Justice, Fairness and Morality" (1997) Volume 4 *Clinical Law Review*, 1, 63. For an article discussing the reasons why lawyers should defend unpopular causes on the basis of professionalism, duty to the court, fealty to the truth, duty to the client and the bounds of the zeal see A Smith, 'Defending the Unpopular down-under', (2006) Volume 30 *Melbourne University Law Review*, 495.

46 R. Radar, *Confessions of Guilt: A Clinic Student's*

Reflections on Representing Indigent Client Defendants (1994) Vol. 1 No. 2, *Clinical Law Review* 299–345 and J. Howard, *Learning to Think Like a Lawyer Through Experience* (1995) Volume 12, No. 1 *Clinical Law Review*, 167–299.

47 I define legal aid service broadly so as to include legal aid commissions, community legal centres and law firms with a public interest law or human rights focus.

clinical programs have to University settings also means that universities are ideally placed to complement case-work with their resources and skill in areas of research capacity and in law reform activities. In addition, sometimes universities also have scope, given the array of interdisciplinary scholars, to inform this law reform and research work in ways in which cash strapped legal aid organisations would be unable to. Universities and their students can build the capacity of legal aid services to respond to emerging trends in case-work where issues of access to justice are ever present and can assist in the conducting of research into problems, brainstorming solutions and making recommendations which may improve either access to the legal system or make the legal system more just.⁴⁸

Aiken has lamented that legal educators neglect issues of justice because many fail to raise them when the opportunity arises. She claims that in this way legal education is failing. She argues that educators often act as if lawyers play no role in the operation of justice. She expresses concern that too often the message that students receive is that justice is merely the product of the application of neutral rules. She states that academics ignore the fact that the exercise of judgment, perhaps the most fundamental of legal skills, is inherently value laden.⁴⁹ She notes the role that law lecturers can play in fostering students concerns about fairness and that they should not limit the consideration of law to only what the law says. She argues that the failure of law lectures to address the students' concerns about fairness may communicate to students that those concerns have no place in the practice of law. Aiken is concerned that legal educators often ignore the significant role that lawyers play in shaping public policy.⁵⁰ In my clinical program at West Heidelberg, the centerpiece is the exposure of students to client experience, the encouragement of questioning, and the need for them to critique the role of fairness and it's interaction with the legal system. The law reform project offers them an opportunity, in addition to the client casework, to do this.

Balos in a provocative statement, has argued that:

The systemic nature of the forces that hold in place the traditional values of the legal profession makes the prospect of a fundamental restructuring of legal education a daunting one. Both legal education and the profession are embedded in values and cultural norms that will not be disrupted easily. Given the structure of the traditional law school curriculum, pedagogical method, and culture, all of which construct of the prevailing boundaries in service to the status quo, the question to be asked is whether one can create a professional school that disrupts the

48 Aiken has also argued that university courses should involve opportunities for students to commence a lifetime process of examining the exercise of privilege and the development of an appreciation of the professional value of striving for justice, fairness and morality. See J H Aiken, 'Striving to Teach "Justice, Fairness and Morality"' (1997) Volume 4 *Clinical Law Review*, 1.

49 Babich, by contrast has argued that clinical programs adopt a self consciously apolitical approach. Problematic in his argument, is that it is based on a political approach. A Babich, *The Apolitical Law School Clinic*, (2005) Volume 11. Issue 2 *Clinical Law Review*, 447, 467. Whilst

this author agrees that in determining a focus on developing and implementing legal strategies to achieve the clients lawful goals does not involve the lawyer in selecting these goals, to go on to argue that apolitical philosophy defuses controversy by offering a politically neutral viewpoint presumes that the advocate themselves come to the legal solving process devoid of any personal contexts or without unconscious views on what is or is not political.

50 J H Aiken, 'Striving to Teach "Justice, Fairness and Morality"' (1997) Volume 4 *Clinical Law Review*, 1, 6-7.

predominant construction of lawyer identity and the framework within which professionalism is defined... perhaps then all of us in the law school and legal community can begin efforts to engage collaboratively in the pursuit of justice as constitutive of professional identity.⁵¹

This quote highlights the challenge for traditional law schools but if law schools are to continue to remain relevant to their students and to the legal profession and society in general then they may need to rise to meet the challenges that Balos presents.

By contrast, Schrag and Meltsner⁵² have argued that evolutionary change is occurring even within law schools:

Law schools are generally more hospitable places for teachers and students interested in law reform and social service than they were when we started teaching more than 25 years ago. Clinical programs are larger and much better established, and teachers who do not themselves teach in clinics are much more accepting of what clinics offer students. Scholarship interests of traditional teachers have changed; law reviews today contain few articles describing legal doctrine as if it was static and many articles (some of them rather abstractly) criticizing existing social arrangements and legal theories. Service that faculty members provide to the community is often reckoned as a positive factor in tenure decisions, and many faculty members who do not engage in clinics engage on a personal level in public service activities, often in conjunction with public interest law firms or government agencies.

This highlights the value of student clinical engagement in policy, not just for clients and students but also for universities themselves.

Conclusion

Feedback from a broad range of organisations has included statements about the value of the input from students, a raised awareness about the experiences of clients and members of the community, and a willingness by these organisations to investigate and take on board recommendations and suggestions made by the students.

Glanville has stated that the history of CLCs has “recognised the connections between direct service work with individuals and the need for legal education and law reform if any change is to be sustained in the longer term.”⁵³ I have argued in this paper, that clinical legal education programs which engage in law reform that is connected to client experience, can present an ideal opportunity for building a greater capacity for organisations where clinics are based in growing research aptitude and positioning client experience into a broader realm that involves improving the justice system. Student lawyers, if given the opportunity can have a role to play in this.

In the seven years since the law reform project was introduced, the students’ work has been widely acknowledged not just by the university but has gained in reputation with governments at State and

51 B Balos, ‘The Bounds of Professionalism: Challenging our Students; Challenging Ourselves’ (1997) Volume 4 *Clinical Law Review*, 129, 146.

52 P G Schrag, M Meltsner, ‘Law School Clinics and Social Reform’ *Reflections on Clinical Legal*

Education, Northeastern University Press, USA, 1998, 313 at 315.

53 L Glanville, ‘Community Legal Centres: Can CLCs advocate for themselves?’, (1999) Volume 24 Issue 3) *Alternative Law Journal*, 154–156.

Federal level. The detailed and high quality work produced by the students under supervision, their ability to base it on real life client experiences and the calibre of the research and suggestions have impressed decision-makers. The decision-makers have not only implemented some of the students suggestions but they seem impressed by the fact that the law students are engaging with the clients and the decision-making processes and mechanisms. In mid 2007, at a book launch, the President of the Court of Appeal praised the students' law reform work at La Trobe University and noted that more law schools should engage in such useful work on behalf of the community. The President then went on to say he was going to a Council of Legal Education Board meeting to table a collection of the students work in the clinic and was going to suggest that clinics undertaking law reform should be part of the future agenda for educating law student in Victoria.

